

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE JAMES MADISON PROJECT,
et al.,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE

Defendant.

Civil Action No. 17-597 (APM)

* * * * *

NOTICE OF CLARIFICATION

The Plaintiffs, The James Madison Project and Brad Heath (“Plaintiffs”), respectfully file Notice to provide this Court with factual clarification regarding recent remarks by President Donald J. Trump (“President Trump”) suggesting there were impending Executive Branch declassification actions that would have disrupted this litigation for a second time.

Presently before this Court are a set of competing dispositive motions, namely the defendant’s Motion for Summary Judgment, see Dkt. No. 40, and the Plaintiffs’ Cross-Motion for Partial Summary Judgment. See Dkt. No. 41. The parties completed briefing on December 20, 2018. See Dkt. No. 45. The scope of the competing dispositive motions is currently limited to the FISA applications targeting Carter Page (“Mr. Page”), and specifically the appropriateness of redactions made to the documents released by the defendant Department of Justice (“DOJ”).

President Trump has already disrupted this litigation once before by way of declassification actions that conflicted with and required substantive changes to the stated legal position of DOJ. In February 2018, President Trump's unilateral declassification of U.S. Government information in the "Nunes Memo" and the "Schiff Memo" resulted in DOJ withdrawing its Glomar response as to the existence of the Page FISA applications, see Dkt. No. 32, and mooted then-pending competing dispositive motions regarding the appropriateness of the Glomar response. On July 20, 2018, after approximately six months of bureaucratic processing of the Page FISA applications, they were released to the public in part. See Dkt. No. 40 at ¶11.

With the recent completion of the Special Counsel's investigation into possible coordination in the 2016 presidential election between President Trump's campaign and the Russian Government, President Trump has now apparently chosen to revive his interest in declassifying parts (if not all) of the Page FISA application materials. On April 25, 2019, in an interview on Fox News with Sean Hannity, President Trump stated that he will be authorizing the declassification of the Page FISA applications and surrounding materials.

HANNITY: Mr. President, I'm going to -- I have to ask you about the New Green Deal, Biden and the media. But one last, last question. Will you declassify the FISA applications, Gang of Eight material, those 302s, or, you know, what we call on this program the "bucket of five"?

TRUMP: Yes. Everything is going to be declassified and more, much more than what you just mentioned. It will all be declassified. I'm glad I waited because I thought that maybe they would object struck if I did it early and I think I was right.

See https://www.realclearpolitics.com/video/2019/04/26/full_video_sean_hannity_interviews_trump_on_biden_russia_probe_fisa_abuse_comey.html (last accessed

April 26, 2019); see also id. (Hannity previously specifies that the “FISA applications” in question are the “four FISA applications” targeting Mr. Page).

The Plaintiffs were concerned that President Trump’s promised actions – if they were in fact imminent – would disrupt this litigation and require yet again for the parties to start from scratch. The Plaintiffs reached out to Government counsel regarding the possibility of seeking an immediate status conference before this Court so that a measure of clarity could be obtained regarding any impending Executive Branch actions.

Government counsel has now provided the Plaintiffs with the very clarifying information they were seeking, and which nullifies the need for a status conference. Specifically, Government counsel informed the Plaintiffs that, to the best of her knowledge, the Department of Justice has not received a declassification order from President Trump and that the agency is not currently conducting a new declassification review. The undersigned greatly appreciate Government counsel’s cooperative response addressing the Plaintiffs’ concerns.

Date: April 29, 2019

Respectfully submitted,

/s/

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